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Dear Acting Assistant Administrator Stoner:

On behalf of Natural Resources Defense Council and our 1.4 million members and activists, thank you for the opportunity provided by your staff to submit comments on the March 4, 2014 draft “Financial Capability Assessment Framework.” We understand that EPA developed this draft Framework through consultation with municipalities, wastewater utilities, and their trade associations. It is critical that EPA provide no less weight to the concerns of the environmental community and the residents – and ratepayers – whose interests in clean water we represent.

We welcome EPA’s attention to the critical question of how to pay for our nation’s urgent investment needs in municipal wastewater and stormwater infrastructure. As all interested parties recognize, an initiative such as the Financial Capability Assessment Framework can hardly, by itself, solve this issue. However, it is critical that EPA use this Framework to drive policies and programs at the local level that maximize the availability of funds necessary to expeditiously attain Clean Water Act compliance, while at the same time addressing legitimate concerns raised by the regulated community about financial capability of ratepayers in a given community (including, especially, the equitable allocation of financial burdens among residents with varying income levels). We believe the Framework should be improved to better achieve both of these goals.

We offer the following specific comments and recommendations to improve the Framework:

1. In the list of factors to be considered regarding the Residential Indicator, proper use of the information described in items 3, 4, and 5 is especially important. Moreover, these factors are fundamentally interrelated. These three factors are:

- (3) Projected, current and historical sewer rates as a percentage of household income, quintile, geography or other breakdown.
- (4) Information on sewer and water usage for various classes of ratepayers.
- (5) Information on the percent of households who own versus rent.

The Framework should clarify that cost burdens to ratepayers in different socioeconomic groups (*e.g.*, income quintiles; renters vs. homeowners) must be calculated based on sewer and water usage associated with those income groups, not based on unit rates multiplied by average or median citywide per household usage. Because lower-income ratepayers will often use less water than higher-income ratepayers (*e.g.*, because they have smaller homes, fewer appliances such as dishwashers and clothes-washers, and fewer/smaller lawns), the cost burden on lower-income ratepayers associated with a particular unit rate may be substantially lower than the cost burden on higher-income ratepayers. Similarly, renters often are not billed directly by water/wastewater utilities, and often do not see the full cost of water/wastewater charges passed along to them in their monthly rents; this is especially (but not exclusively) true in cities where some of the rental housing stock is subject to rent regulation. Therefore, applying a single service area-wide average usage level to all classes of residential customers – as is often done in utilities’ analyses of the impact of water/wastewater rates on customers – is inherently skewed towards finding higher-than-actual burdens on lower-income ratepayers and (often) renters. The Framework should clearly define the proper analytic approach.

- 2. Very similar to point #1, in cities with stormwater utility charges based on impervious area, the distribution of these charges among classes of ratepayers must be accounted for. Stormwater fees – whether charged directly or passed along (if at all) through rent – will tend to be lower for lower-income customers and renters, since they tend to live on more-densely developed lots that have less impervious area per household.
- 3. The Framework appears to take current rate structures as a given, rather than requiring consideration of alternative rate structures,¹ such as inclining block rates for volumetric water/sewer charges, impervious area-based stormwater fees, and direct financial assistance or lower rates² for low-income customers, all of which can both (i) shift the allocation of cost burdens among categories of ratepayers and (ii) create incentives for customers to reduce water use and/or stormwater discharge in ways that ultimately reduce

¹ We note that EPA’s Jan. 13, 2013 memo

(http://water.epa.gov/polwaste/npdes/stormwater/upload/sw_regionalmemo.pdf), which initiated the process of developing the Financial Capability Framework, stated that the Agency would address, among other things, “How rate structures present both limitations and opportunities.” The March 4, 2014 draft of the Framework does not appear to do so.

² We note that EPA’s Jan. 13, 2013 memo stated as follows:

Uniform rate structures may place a disproportionately high financial burden on households with low incomes. EPA strongly encourages municipalities to consider establishing lower rates or subsidies for low income customers....EPA continues to encourage communities to consider and adopt rate structures that ensure that lower income households continue to be able to afford vital wastewater services.

We support this approach, but it does not appear to be reflected in the March 4, 2014 draft of the Framework.

both customer's monthly bills and the utility's own compliance costs. The Framework should require that utilities compare the affordability of a given compliance schedule both under existing rate structures, and under alternative rate structures that are within the utility's (or the municipality's) authority to establish.

We have seen comments from EPA in the trade press, related to the Agency's development of the Framework, to the effect that "it's not really EPA's function to get in and start setting up rates for municipalities." While it is obviously true that EPA lacks the authority to set rates, it does have the authority to set compliance schedules that account for a municipality's financial capability. EPA should not allow a municipality to obtain a longer compliance schedule on the basis of financial incapability when there are alternative rate structure legally available to the municipality, of which the municipality chooses not to avail itself, that would enhance the municipality's financial capability to invest in Clean Water Act compliance.

4. Similar to point #3, the Framework should require consideration of innovative financing mechanisms that can enhance financial capability, such as the "Century Bond" recently issued by DC Water; the "Public-Private Partnership" approach being used in Prince George's County, MD; and various other approaches to leveraging private investment in green infrastructure, such as the Greened Acre Retrofit Program" recently launched in Philadelphia.³ Again, EPA should not allow a municipality to obtain a longer compliance schedule on the basis of financial incapability when there are alternative financing methods available to the municipality, which the municipality has not evaluated, that could enhance the municipality's financial capability to invest in Clean Water Act compliance.
5. The Framework should require utilities and municipalities to consider adopting regulations, policies, and programs that reduce demand on wastewater and stormwater systems, at little or no cost to the utility or municipality, thereby reducing overall costs and enhancing financial capability to meet Clean Water Act requirements on a faster timeline. These include, for example:
 - a. *Local regulations requiring on-site retention of stormwater in new development and redevelopment, and retrofits of existing development:* Philadelphia and New York City provide two examples where a city's CSO compliance approach hinges on implementation of such regulatory requirements to leverage private investments in on-site stormwater management, offsetting public investments that would otherwise be necessary. Each of those cities appropriately receives "credit" towards its compliance obligations for CSO reductions that result from these private stormwater management investments, so long as the city's regulatory program ensures proper design, installation, and long-term maintenance of installations on private property.

³ We note that EPA's Jan. 13, 2013 memo stated that the Agency would address, among other things, "How innovative financing tools, including public private partnerships, are related to Affordability." The March 4, 2014 draft of the Framework does not appear to do so.

- b. *Local regulations, policies, and programs to promote water conservation:*
Similar to how green infrastructure on private property reduces stormwater inputs to municipal sewer systems – thereby enhancing municipalities’ financial capability to achieve a given level of CSO reductions – demand reduction strategies for indoor and outdoor water use also contribute to Clean Water Act compliance and reduce operations and capital costs to utilities. A recent NRDC issue brief, “Waste Less, Pollute Less,” explains (with real-world examples) how municipalities and wastewater and stormwater utilities can use a range of approaches that reduce water demand and, consequently, reduce Clean Water Act compliance costs by reducing flows into wastewater collection and treatment systems and into municipal separate storm sewers.⁴
6. The Framework should provide that, where permits or enforcement orders allow municipalities to seek extensions of compliance schedules if financial capability declines over time (*e.g.*, because of a downturn in the wider local, regional, or national economy) – as some of the more recent state and/or federal orders do – the municipality is also obliged to reevaluate financial capability when economic circumstances improve, such that an acceleration of the compliance schedule would be appropriate and affordable. Municipalities and utilities have sought to incorporate the notion of “adaptive management” into long-term compliance efforts (*e.g.*, CSO Long Term Control Plans), allowing for adjustments in, for example, the balance between green and gray infrastructure as new information about the effectiveness of green infrastructure becomes available; they should be likewise required to use adaptive management to improve upon compliance schedules when significant new information relevant to financial capability becomes available.
7. EPA’s compliance and enforcement approach must also account not only for the costs of compliance, but also for the value of the benefits of clean water that accrue to residents (*i.e.*, ratepayers) and their communities. Accordingly, when determining appropriate compliance schedules, EPA must consider the environmental and economic benefits of compliance (including benefits associated with water quality as well as co-benefits, such as those identifiable through “triple bottom line” analysis). The Framework should include a section to address this point, to make clear that both the costs and benefits are relevant to the reasonableness of any proposed compliance schedule.

* * *

⁴ This issue brief is available at <http://www.nrdc.org/water/clean-water-act-urban-conservation.asp>.

Thank you for your consideration of these comments. Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Lawrence Levine', is positioned above the typed name.

Lawrence Levine
Senior Attorney
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cc (via email): Deborah Nagle (EPA)
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